

MEETING OF THE PORT PHILLIP CITY COUNCIL

7 DECEMBER 2022



10.1 MOUBRAY STREET ROAD CLOSURE - FORMAL DISCONTINUANCE

EXECUTIVE MEMBER: LACHLAN JOHNSON, GENERAL MANAGER, CUSTOMER, OPERATIONS AND INFRASTRUCTURE

PREPARED BY: EMMA MURDOCH, EXECUTIVE MANAGER PROPERTY AND ASSETS
CHRISTOPHER COOK, COORDINATOR OPEN SPACE PROJECTS
SARAH BUFTON, COORDINATOR OPEN SPACE RECREATION PORTFOLIO

1. PURPOSE

- 1.1 The purpose of this report is to consider whether the road known as part Moubray Street, between Withers Street and Bridport Street West, Albert Park, shown coloured blue on the plan contained in Attachment 1 to this Report should be discontinued pursuant to the Local Government Act 1989 (Vic) (Act).

2. EXECUTIVE SUMMARY

- 2.1 The Moubray Street Pop Up Park is situated on part of the Road known as part of Moubray Street, between Withers Street and Bridport Street West, Albert Park shown coloured blue on the plan contained in Attachment 1 to this report (Road).
- 2.2 The Road has an area of approximately 1,200 m² and forms part of the local road known as MOUS02-20 on Council's Register of Public Roads.
- 2.3 This section of Road is located adjacent to Albert Park Primary School and has operated as a Pop-Up Park (in temporary form) since 2013.
- 2.4 On 24 May 2016, Council also resolved to: "preserve the intention to create a permanent public open space in the closed section of Moubray Street, subject to funding".
- 2.5 A commitment has been made by the Department of Environment Land Water and Planning (DELWP) to transfer \$1.3 million of Local Parks Program Funding from Cobden Street Pocket Park project to Moubray Street Community Park.
- 2.6 The transformation of the closed road space into a permanent park requires a formal road discontinuance process.
- 2.7 On 7 September 2022, Council resolved to:
 - a) remove the road known as MOUS02-20 part of Moubray Street, between Withers Street and Bridport Street West, Albert Park from Council's Register of Public Roads; and
 - b) commence the statutory procedures and give notice pursuant to sections 207A and 223 of the Local Government Act 1989 (Vic) of its intention to discontinue the Road, noting that if the Road is discontinued, the Road will vest in Council in fee simple.
- 2.8 A total of seventeen written submissions were received (noting that seven submissions were received from the one party)

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- 2.9 Council formally received and considered these submissions at its meeting on 16 November 2022. The key feedback themes of the submissions included comments on:
- a) the park's proven benefits to the school and the broader community as a playing area and valuable open space;
 - b) enhanced safety associated with slower traffic in streets surrounding the park, providing positive impacts on pedestrian safety;
 - c) desirability of prioritising access for the school during school hours and community access at all other times; and
 - d) no specific reason for objection was provided by the two submissions that did not support the Road discontinuance.
- 2.10 Council is now in a position to make a decision on whether to discontinue the Road and create a permanent park.
- 2.11 Officers recommend that Council discontinues the Road to support the establishment of the Moubray Street Community Park.

3. RECOMMENDATION

That Council, having considered the submissions in response to the public notice regarding Council's proposal to discontinue the road known as MOUS02-20, being part of Moubray Street, between Withers Street and Bridport Street West, Albert Park, as contained in Attachment 1 to this Report (Road):

- 3.1 Resolves to discontinue the Road as it considers that the Road is not reasonably required for public use;
- 3.2 Directs that a notice pursuant to clause 3 of Schedule 10 of the Local Government Act 1989 (Vic) is published in the Victoria Government Gazette;
- 3.3 Directs that the Chief Executive Officer or delegate signs an authorisation allowing Council's solicitors to execute any documents required to be signed on Council's behalf in connection with effecting the discontinuance of the Road;
- 3.4 Directs that any easements, rights or interests required to be created or saved over the Road by any public authority be done so and not affected by the discontinuance of the Road; and
- 3.5 Directs that the Chief Executive Officer or delegate notifies, in writing, every person who has lodged a separate submission, of the decision and reason/s for the decision.

4. KEY POINTS/ISSUES

- 4.1 The Moubray Street Pop Up Park is situated on part of the local road known as Moubray Street, between Withers Street and Bridport Street West, Albert Park, shown coloured blue on the plan contained in Attachment 1 to this report (Road).
- 4.2 The Road has an area of approximately 1200 m² and forms part of the local road known as MOUS02-20 on Council's Register of Public Roads.
- 4.3 The Moubray Street Pop Up Park was established as a trial in July 2013 to provide a public open space for the local community and to ease pressure being experienced by the Albert Park Primary School caused by growing enrolments and limited school ground open space.

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- 4.4 On 24 May 2016, Council finalised the statutory road closure process, by approving the permanent road closure the Road. The permanent road closure has enabled the retention of the temporary Pop Up Park. This road closure also enables the next statutory step to be taken for the establishment of a permanent Moubray Street Community Park, through discontinuance of the Road.
- 4.5 On 24 May 2016, Council also resolved to: “preserve the intention to create a permanent public open space in the closed section of Moubray Street, subject to funding”.
- 4.6 The transformation of the closed road space into a permanent park requires a formal road discontinuance process.
- 4.7 Council has statutory power to consider discontinuing the Road.
- 4.8 On 7 September 2022, Council resolved to:
 - a) remove the road known as MOUS02-20 part of Moubray Street, between Withers Street and Bridport Street West, Albert Park from Council’s Register of Public Roads; and
 - b) commence the statutory procedures to consider discontinuing the Road pursuant to Clause 3 of Schedule 10 of the Local Government Act 1989 (Vic) noting that if the Road is discontinued, the Road will vest in Council in fee simple.
- 4.9 Section 207A of the Local Government Act 1989 (Vic), requires a proposal to discontinue a road to comply with Section 223 (Right to make a submission) of the Act. This requires Council to undertake a formal public consultation process which is specific to the proposal to discontinue the road.
- 4.10 Council carried out community consultation throughout August, September and October 2022, providing the opportunity for community members to make submissions. The submissions deadline was 5 pm on 19 October 2022
- 4.11 A total of seventeen written submissions were received. One IP address/computer made seven submissions.
- 4.12 Eight submissions expressed support for the discontinuance of the Road and creation of the Community Park, including support from the Albert Park Primary School Council.
- 4.13 Eight submissions objected to the discontinuance of the Road but gave no specific reason for objection (Noting seven submissions were from one IP address).
- 4.14 Many of the submissions contained suggestions and considerations for the final design and management of the Moubray Street Community Park. Where possible, officers are incorporating the feedback into the finalisation of the design.
- 4.15 The key feedback themes of the submissions included:
 - a) the park’s proven benefits to the school and the broader community as a playing area and valuable open space
 - b) enhanced safety associated with slower traffic in streets surrounding the park
 - c) desirability of prioritising access for the school during school hours and community access at all other times; and
 - d) no specific reason for objection was provided by the two submissions that did not support the road discontinuance

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- 4.16 Council formally received and considered these submissions at its meeting on 16 November 2022.
- 4.17 Council is now in a position to make a decision on whether to discontinue the Road and create a permanent park.
- 4.18 Officers recommend that Council discontinues the Road to support the establishment of the Moubray Street Community Park.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 The local community was engaged between 2013 and 2016 through the establishment of the initial trial Pop Up Park and the subsequent statutory process for a road closure of the Road.
- 5.2 This feedback was considered when finalising the design for the Pop-Up Park adopted by Council in 2016 and is also helping to shape the concept design for the Moubray Street Community Park.
- 5.3 The project webpage and Council's Have Your Say website have been updated with the latest project information prior to commencing the road discontinuance process.
- 5.4 The key previous consultation steps include:
 - a) statutory requirements have been met by advertising intent of road discontinuance in the Public Notice Section of The Age on 21 September 2022; and,
 - b) letters were distributed to Albert Park Primary School and owners/occupiers in the area bounded by Victoria Av, Richardson St, St Vincent St and Cardigan Pl.
- 5.5 On 18 January 2016, VicRoads (the former State Government road authority) advised the City of Port Phillip that it had no objection to the closure of the Road, as proposed by Council. VicRoads' road closure and discontinuance statutory functions are now the responsibility of the Head, Transport for Victoria (Head, TfV).
- 5.6 Head, TfV has confirmed that Council is not required to obtain any additional formal consent to the discontinuance of the Road.
- 5.7 The following statutory authorities have been advised of the proposed discontinuance of the Road and asked to respond to the question of whether they have any existing assets in the Road, which should be saved under section 207C of the Act. Easements on title will be required in favour of these authorities dependant on their responses.
 - a) Council;
 - b) South East Water;
 - c) Melbourne Water;
 - d) CitiPower;
 - e) Multinet;
 - f) AusNet Electricity Services;
 - g) Australian Gas Networks;
 - h) United Energy;
 - i) NBN;
 - j) APA;
 - k) Telstra; and
 - l) Optus.

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- 5.8 To date Council has not received responses from any of the statutory authorities. Any easements required will be marked on title and considered appropriately.
- 5.9 The communications and consultation activities carried out between August 2022 and 19 October 2022 were:
- a) onsite community engagement sessions on Tuesday 9 August, 3pm to 5pm; and Saturday 20 August, 10am to 12pm;
 - b) letter and fact sheet mailed to property owners and occupiers within the area;
 - c) 'Have Your Say' online engagement page with feedback form; and,
 - d) advertisement in The Age newspaper on 21 September 2022.
- 5.10 The submissions deadline for written submissions was 5 pm on 19 October 2022.
- 5.11 Council received seventeen submissions in response to the public notice.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 Under clause 3 of Schedule 10 of the Act, a council has the power to discontinue roads located within its municipality and sell the land from that road or retain the land.
- 6.2 Council has a Discontinuance and Sale of Roads Policy (Policy) that enables roads that are no longer reasonably required for general public access to be discontinued.
- 6.3 A preliminary soil contamination assessment was undertaken for the Moubray St Pop-Up Park, in June 2015. Four boreholes were drilled within asphalt areas of the site. Individual samples were tested for comprehensive screens and common contaminants reported in Albert Park. None of the samples exceeded the criteria for residential onsite use. As such the site is considered suitable for continued recreation use.
- 6.4 The legal risk associated with changing the function of Moubray Street is being addressed by complying with the legislation, policy and creating provision for service authorities.

7. FINANCIAL IMPACT

- 7.1 The project was initially funded as part of the 21/22 portfolio to improve access and increase greening. Council allocated \$500,000 for the project, with 21/22 design and 22/23 delivery.
- 7.2 On 16 September 2022, the Department of Environment Land Water and Planning (DELWP) approved the Council request to transfer \$1.3 million of Local Parks Program Funding from Cobden Street Pocket Park project to Moubray Street Community Park.
- 7.3 The proposed discontinuance of the Road has no detrimental financial implications.

8. ENVIRONMENTAL IMPACT

- 8.1 Strategies to reduce the impacts of urban heat include reduction in greenhouse gas emissions, increased permeable surfaces, increased vegetation and green spaces.
- 8.2 Incorporation of Water Sensitive Urban Design (WSUD) treatment zones to irrigate planting harvested from permeable paving area has been incorporated in the design.



9. COMMUNITY IMPACT

- 9.1 Council will facilitate the discontinuance of roads where appropriate consultation has occurred, legislative requirements have been met and it is considered that road discontinuance is in the best interest of the wider community.
- 9.2 The proposed discontinuance of the Road will enable the land in the Road to be re-purposed.
- 9.3 The project has broad community support, as evident through the previous consultation processes undertaken the initial establishment of the trial Pop-Up Park in 2013.
- 9.4 Well-designed public spaces have economic benefits and help facilitate the economic recovery from the COVID-19 pandemic.
- 9.5 Public space contributes to the liveability of our City and defines our unique sense of identity and place. It is open and accessible to people. It is where we meet our friends, exercise, play sport and relax and is essential to our physical and mental well-being.
- 9.6 The project will provide additional open space and align with Council's vision to create a well-connected network of public spaces that nurtures and supports the health, wellbeing, social connection, creative expressions and environment of our community.
- 9.7 Moubray Street Community Park will offer improved access and circulation throughout the reserve by providing upgraded walking paths and safer opportunities to access the park by more users.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 Transitioning the temporary road closure for the Moubray Street Community Park into a permanent public space aligns with the key moves of Council's new Places for People: Public Space Strategy 2022 – 2032 to repurpose road space to create more useable public spaces, ensuring our community is within a short, easy and safe walking distance to public space.
- 10.2 Council Plan – Liveable Port Phillip
 - Strategic Objective – Port Phillip is a great place to live, where our community has access to high quality public spaces, development and growth are well managed, and it is safer and easy to connect and travel within.
 - What we will work towards (our four-year strategies) – Port Phillip is safer with liveable streets and public spaces for people of all ages and abilities to enjoy.
 - We will provide – Access to upgraded, expanded and well-maintained public and outdoor spaces for people of all ages and abilities to visit, in line with our 10-year Public Space Strategy (once adopted by Council), prioritised within available budgets each year.
 - We will facilitate and advocate for – The best possible public space outcomes that support community health and wellbeing, through infrastructure projects undertaken in our City by other levels of government and stakeholders.
- 10.3 Council Plan – Sustainable Port Phillip
 - Strategic Objective – Port Phillip has a sustainable future, where our environmentally aware and active community benefits from living in a bayside city



that is greener, cooler, cleaner and climate resilient. The importance of action in this area is emphasised by Council declaring a Climate Emergency in 2019.

- What we will work towards (our four-year strategies) – Port Phillip has cleaner streets, parks, foreshore areas and waterways where biodiversity flourishes.
- We will provide – Urban forests to increase tree canopy, vegetation, greening and biodiversity and reduce urban heat, in line with Council's Greening Port Phillip and Act and Adapt Strategies prioritised within available budgets each year.
- We will provide – Increased permeability of ground surfaces across public streets and in our public spaces as well as examining ways to support greater permeability on private property.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

If the Proposal is approved:

11.1.1 a notice will be published in the Victoria Government Gazette to formally discontinue the Road; and

11.1.2 a transfer of the discontinued Road pursuant to section 207D of the Act will be prepared by Council's solicitors.

11.1.3 The park design will be finalised after completion of the road discontinuance process.

11.1.4 Construction of the Moubray Street Community Park is expected in mid 2023.

11.2 COMMUNICATION

11.2.1 The public notification process has provided the community with the opportunity to make submissions in respect of the Proposal. Having considered that the submissions received, Council may now determine whether to discontinue the Road.

11.2.2 Information about this project will be available on Council's website, along with information about how to sign up for updates on the project's process.

11.2.3 Council's Have Your Say page and web page will be updated with the details of Council's decision and a link to the minutes of this Council Meeting.

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS

1. Road Plan  [↓](#)

2. Letter and Fact Sheet mailed to community  [↓](#)